

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT REGINALD COMENOUT SR.,  
EDWARD AMOS COMENOUT III, THE  
ESTATE OF EDWARD AMOS  
COMENOUT JR., ROBERT REGINALD  
COMENOUT JR., MARLENE  
COMENOUT and LEE A. COMENOUT  
SR.,

Plaintiffs,

v.

J. MARK KELLER, et al.,

Defendants.

CASE NO. 3:16-cv-05464-RJB

ORDER DENYING THE STATE  
DEFENDANTS' MOTION FOR  
SANCTIONS

BEFORE THE COURT is the State Defendants' Motion for Sanctions. Dkt. 49. The Court has considered pleadings filed in favor of and against the motion and the remainder of the file herein.

The Court recited the procedural posture of the case in its Order on Plaintiffs' Motion for Leave to File Third Amended Complaint (Dkt. 63), which should be incorporated herein.

The State Defendants seek sanctions against Plaintiffs for filing the Motion for Leave to File Third Amended Complaint (Dkt. 46). The State Defendants argue that the Third Amended

1 Complaint relitigates issues already decided in this and other cases, harasses the State  
2 Defendants, and fails to correct defects that the State Defendants identified to Plaintiffs by letter.

3 “Filing a complaint in federal court is no trifling undertaking.” *Christian v. Mattel, Inc.*,  
4 286 F.3d 1118, 1127 (9<sup>th</sup> Cir. 2002). Instead, by filing a pleading, an attorney “is certifying” that,  
5 to the best of that person’s belief, and formed after a reasonable inquiry:

6 (1) [the pleading] is not being presented for any improper purpose, such as to harass, cause  
unnecessary delay, or needlessly increase the cost of litigation;

7 (2) the claims, defenses, and other legal contentions are warranted by existing law or by a  
8 nonfrivolous argument for extending, modifying, or reversing existing law or for  
establishing new law;

9 (3) the factual contentions have evidentiary support or, if specifically so identified, will  
likely have evidentiary support after a reasonable opportunity for further investigation or  
10 discovery; and

11 (4) the denials of factual contentions are warranted on the evidence or, if specifically so  
identified, are reasonably based on belief or a lack of information.

12 Fed. R. Civ. P. 11(b). When the complaint is the focus of the Rule 11 inquiry, courts must  
13 determine, “(1) whether the complaint is legally or factually baseless from an objective  
14 perspective, and (2) if the attorney has conducted a reasonable and competent inquiry before  
15 signing and filing it.” *Id.* quoting *Buster v. Greisen*, 104 F.3d 1186, 1190 (9<sup>th</sup> Cir. 1997) (internal  
16 quotations omitted).

17 *1. Legally/factually baseless?*

18 The Third Amended Complaint does contain some allegations that lack support under the  
19 law. For example, attempting to challenge the constitutionality of Washington’s tax on cigarettes  
20 sold by Indian retailers to non-Indian purchasers is without merit, because the issue is well-  
21 settled. *Confederated Tribes & Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078  
22 (9<sup>th</sup> Cir. 2011). Nonetheless, other allegations may be warranted by gray areas in existing law or  
23 include nonfrivolous arguments.

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The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Robert Bryan

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